

## 12-25 MARACICH V. SPEARS

DECISION BELOW: 675 F.3d 281

LOWER COURT CASE NUMBER: 10-2021

### QUESTION PRESENTED:

The Driver's Privacy Protection Act of 1994 ("DPPA" or "Act"), 18 U.S.C. §§ 2721-2725, prohibits the obtainment, use, or disclosure of "personal information" maintained in state motor vehicle department ("DMV") databases, unless the use of such information falls within one of several discrete enumerated exceptions. This case presents an opportunity for this Court to resolve a conflict among the circuits and even state courts as to the circumstances under which the litigation exception to the Act permits lawyers special rights of access to DPPA-protected information.

In this case, the Fourth Circuit became the first court to hold that the acquisition and use by lawyers of confidential information from a DPPA-protected database solely for the purpose of soliciting clients, as opposed to searching for evidence or witnesses, qualified as a use "in connection with" litigation, pursuant to 18 U.S.C. § 2721(b)(4). The Eleventh Circuit, the Third Circuit, and the District of Columbia Court of Appeals, on the other hand, have held that the litigation exception does not permit lawyers to obtain or use DPPA-protected information to find or solicit clients. Instead, these courts have made clear that the litigation exception permits use of private information only when the information is relevant or likely to lead to discovery of evidence or witnesses. The Fourth Circuit has crossed that line, thereby inserting into the DPPA what amounts to a "for use by lawyers" exception, as opposed to a "for use in litigation" exception, and further muddling an already confusing and conflicted area of the law.

This petition asks the Court to consider two questions:

1. Whether the Fourth Circuit erred in holding, contrary to every other court heretofore to have considered the issue, that lawyers who obtain, disclose, or use personal information solely to find *clients* to represent in an incipient lawsuit -as opposed to *evidence* for use in existing or potential litigation -may seek solace under the litigation exception of the Act.
2. Whether the Fourth Circuit erred in reaching the conclusion (in conflict with prior precedent) that a lawyer who files an action that effectively amounts to a "place holder" lawsuit may thereafter use DPPA-protected personal information to solicit plaintiffs for that action through a direct mail advertising campaign on the grounds that such use is "inextricably intertwined" with "use in litigation."

CERT. GRANTED 9/25/2012